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Evolving Military Law: Sentences and Sentencing

A presentation by Major General George S. Prugh, The Judge Advocate General, United States Army, from a panel discussion on "Evolving Military Law" with The Judge Advocates General, at the American Bar Association Meeting, Honolulu, Hawaii, on August 13, 1974.

The topic "Sentences and Sentencing" divides itself into two distinct areas, which should be separately addressed. The term "sentence" connotes the imposition of a penalty on an individual found guilty of wrongdoing, by a judicial determination or decree. (I use the word 'judicial' in its broad context, for in some jurisdictions, civilian as well as the military, offenders are actually sentenced by the jury.) The philosophical description of what a sentence entails, or should entail, has been debated for centuries. The only guidance offered by the writers of our Constitution, which provides the guiding light in our law, is that a sentence may not be "cruel and unusual." The term, "sentencing," connotes the *process of imposing* a sentence by judicial decree. Again, the actual mechanics of this operation—in what it entails, and how it is effected—have long been debated, and have experienced many changes in light of the accepted philosophy behind the meaning and reasons for a sentence, prevalent at any particular time. While the law surrounding the sentencing process has evolved greatly over the years, in many respects, to a point where there is little resemblance to what it was even 50 years ago, there is uncertainty as to how sentences should be determined. For example, some civilian jurisdictions, and the military, retain the basic concept that the factfinders should also be the sentencers, but most of our courts vest this in a specialist, the judge.

To speak first of sentences in the military, here is a whole area we military lawyers have largely ignored, at least insofar as what the philosophy behind them should be. We have carefully defined graduations of sanctions and punishment commensurate with specified offenses. But far too little attention has been paid to the *reasons* underlying these sentences. We should ask ourselves the question, "What are we trying to have the sentence achieve?" The answer cannot be found in our statutory authority, the Uniform Code of Military Justice (UCMJ); the *Manual for Courts-Martial, United States, 1969 (Revised edition);* nor in the decisions of our appellate courts.

The reasons underlying a sentence are several. Retribution was once the prime purpose of a sentence, but this concept has been relegated to a lesser status in our law. Deterrence has an important function in two ways: (1) by discouraging the sentenced individual from future wrongful conduct; and, (2) by discouraging others from following that wrongful course of conduct. Sentences are often expected to promote another type of preventive function, by reinforcing moral inhibitions, and stimulating habitual law-abiding conduct on the part of the community. The protection of the society is also an important aspect of a sentence. Finally, and perhaps most important, a sentence is expected to have a rehabilitative effect on the offender by assisting in his absorption back into society equipped to have a productive and meaningful life.

Whatever it is that we are trying to achieve by the sentence, we should then ask ourselves how close we are to achieving this purpose. Military lawyers are in a good position to give thought to the present effect of our sentences in the military, and what that effect should be for the future. Criminal punishment has come a long way since the cat o' nine tails as the answer to thievery, keel-hauling in response to insubordination, and branding for drunkenness. The military, like the civilian courts, have passed through that era, reported in Winthrop's *Military Law and Precedents,* when a sentence included especially ignominious elements, such as being "drummed out of the service" after being stripped of military rank, or being tarred and feathered or confined with a ball and chain. The shortcomings of such sentences were apparent to a more civilized and humane society. They were also ineffective. Corporal punishment achieved little, other than

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its visible, physical qualities. The severely punished offender was much more likely to emerge a hardened and cynical criminal than a rehabilitated citizen.

Based on experience and, we hope, enlightened thinking, the services have a different system today. In the Army, the notion of a sentence to confinement in a "stockade" or jail is not quite as automatic as it used to be and rehabilitation is an uppermost consideration. The local stockades, now called confinement facilities, are essentially detention centers, where offenders remain in pretrial confinement until sentenced, whereupon they are transferred to the U.S. Disciplinary Barracks at Fort Leavenworth or the U.S. Army Retraining Brigade at Fort Riley, Kansas. Rehabilitation is the primary goal, with the key being an "accent on the individual" approach. At the Retraining Brigade, there is one staff member (psychiatrists, chaplains, social workers, etc.) for every 2.6 prisoners. Besides relearning military skills, prisoners are given instruction in proper motivation, taught fundamental civilian lessons, such as how to handle money, and are counselled with reference to particular identifiable problems which led them into trouble initially. The speed and high percentage of apparent rehabilitation and return to duty have interested many civilian penologists. The severity of a sentence has also been re-examined. In keeping with Jeremy Bentham's maxim that the "punishment ought in no case to be more than what is necessary to bring it into conformity with the rules here given...," the average sentence to confinement in the Army has decreased dramatically of late. In fiscal year 1973, the median confinement in a guilty plea before a general court-martial was 6-8 months; in a plea of not guilty, 9-11 months. For a BCD special, the median confinement was 3-5 months. I ask you oldtimers of World War II to compare this with sentences you knew as typical in those days of 30 years ago.

These are steps in the right direction in our quest for the optimum sentence—one which I believe should deter but will also ensure that individuals with minor disciplinary infractions can rapidly return to duty and honorable service. Rehabilitation for the serious offenders contemplates preparation for return to the civilian community.

However, there remain serious problems with our present sentences, which need to be addressed and corrected. The sentencing alternatives in the military, as set forth in the *Manual*,

can be separated into three distinct categories: (1) loss of liberty (confinement); (2) financial (forfeiture or detention of pay); and, (3) status (loss of grade or punitive discharge). Often there is an ancillary effect or fourth category, the category of punishment that flows as a consequence of the formal sentence. For example, while a reduction in grade may appear to be a just and lenient sentence, there is the ancillary effect this has on the individual's prospective financial situation—perhaps costing him thousands of dollars per year. The punitive discharges, for another example, have a consequential impact on the individual as he attempts readjustment into society. In these and other cases, the ancillary effect, or fourth category of sentences, makes the penalty invoked greater than would appear initially. There is nothing in the *Manual* which delineates this or provides instruction on how to deal with it. There should be.

Sentences to extended confinement (as we know it today) are not the answer to the disciplinary offender whom we want to get back into the unit. A poor soldier sent to confinement frequently emerges as a bad soldier.

In addition, while in pretrial confinement, his time can, but need not be, considered or counted in his sentence. When pretrial confinement is considered necessary, I believe the prisoner should be given full credit for time so spent.

After sentencing, the offender is often sent away from his unit to the Disciplinary Barracks or the Retraining Brigade. In such case, although rehabilitative efforts run high, the individual is co-mingled with other sentenced prisoners, some who are hardened, felony-type offenders. This is not the answer for the disciplinary offender whom we want back. The American Bar Association's *Standards Relating To Sentencing Alternatives and Procedures* point up the fact that removing such a soldier "completely from the community may impede his successful reintegration later...."

We have some alternatives to confinement. The services have explicit provisions for correctional custody under Article 15, UCMJ, where a man stays in the area and works with his unit during the day. This is an important rehabilitative tool, but this concept is completely lacking in the alternatives of a court-martial sentence, however, much to the services' detriment. Likewise, a full-fledged probation system, presently found nowhere in our system, would be of great benefit in this area, and needs to be considered.

As a prelude to a probation system, thought needs to be given to a sentence of a provisional forfeiture of pay (so that the pay is detained, but is returned *if*, and *only* if, the defendant improves his wrongful course of conduct). Fairly long periods of "probation" could be established, possibly for up to one year. For example, suppose the withholding of $200 per month for six months. This would mean the defendant would have $1,200 riding on his future good conduct. This makes a meaningful "rehab" goal. An interim "probation" system might also include sentencing alternatives like placing an individual in a non-promotion status without the necessity of confinement. While we presently have a "flagging" procedure that does this for an individual facing court-martial charges, the alternative as a sentence is unavailable to the sentencer endeavoring to tailor the punishment to the individual case. Also in this regard, the defendant's reimbursement to the victim could be considered. A sentence could be postponed for a limited period of time to give the defendant an opportunity to make his victim whole. If, at the conclusion of the specified period, this has been accomplished, a reduction could be effected in the originally assessed penalty.

The aforementioned *brevity* of the sentences to confinement, while providing overall justice in the present context, is not an answer in and of itself. It is unlikely that real rehabilitation can work its full effect in a short period of time.

Another problem with our present sentences, at least in the Army, is the "weighing process" which develops between a court-martial and a discharge "in lieu of courts-martial" (Chapter 10 discharges). The accused and his defense counsel certainly consider all alternatives. But so too does the convening authority. Unfortunately, we really don't know the comparative weight to be given confinement versus discharges, as a deterrent factor.

All of these considerations must be counterbalanced in terms of the unique mission of the military. In *Levy* v. *Parker*, The Supreme Court recently reaffirmed its determination that military law must be differentiated from civilian law in certain respects. In the military, criminal law serves an additional function; it must not only prevent crime, but it is expected to promote and maintain good order and discipline. While

our sentences can and must be penologically correct, we must face a certain reality, in that some sentences have to demonstrate to others the high price they must pay if they commit the proscribed acts. To quote the other extreme of Bentham's maxim, the sentence "must not be less in any case than what is sufficient to outweigh that of the profit of the offense." In war, for instance, a light sentence for desertion in the face of the enemy, will not show that the price for continuing the fight is less than the price for running. The functioning of the UCMJ in time of war, including its sentences, must be carefully analyzed.

This leads us to yet another consideration. What are the limits of punishment to be imposed by a sentence? The *Manual* specifies these upper limits—or does it? For example, what is the current status of the death sentence, in view of *Furman* v. *Georgia?* It can be reasoned that regardless of *Furman* a case may be referred to a general court-martial for trial as a capital case. This is so because *Furman* only announced a rule regarding the imposition of capital punishment, and it did not bar trial under procedural rules designed to ensure additional protection for an accused who faces trial for an offense for which Congress had authorized the death penalty. But what of the death sentence itself? Is it necessary a s a deterrent? The services have not resorted to it for some time, but conditions inherent in an all-out war, as previously mentioned, suggest it has a deterretnt effect. What of the Table of Maximum Punishments in the *Manual*? In view of the aforementioned brevity of sentences actually imposed, the Table is frequently only academic. Since effective deterrents vary not only with the individual, and their social impact, but also in regard to the risks, perhaps we should take this into account in the Table. With the risks from wrongdoing far more severe in wartime, the Table should separately reflect this factor. The Table might also be made to reflect increased maximum punishments for prior convictions including civilian convictions, which I will address shortly. We might then achieve a more useful tool in assessing a proper, realistic sentence in each individual case.

Turning now to the other half of this topic, I would like to address a few remarks to "sentencing"—the process by which sentences are adjudged. Again, there are many issues in need of resolution. Problems result from the *inclusion* of antiquated concepts in the UCMJ, such as sentencing by court members rather than the judge, and from the Code's *silence* as to the purpose to be achieved in sentencing. These areas have not been clarified by the *Manual*, or by guidance from the Court of Military Appeals. In the case of the Court, this may stem from its own lack of authority in the sentencing area, and its early expressed belief that sentence aspects, such as remission, suspension, and mitigation, are not judicial.

Take first the issue of the proper sentencing authority—judge or jury? We have been troubled little that their two functions demand far different qualities. The fact finder should have those characteristics that determine truth—sensitivity, discernment, maturity, ability to judge credibility, ability to rationalize, to apply logic, to grasp facts and build upon them, to know what is expectable in human relations under a given set of circumstances. The sentencers, however, are called upon for another task. They must of course, also focus on this individual and the circumstances surrounding his offense; but they must weigh the chances and means of rehabilitation; they must estimate the need and effectiveness of punishment; they must consider the needs of the community in safeguarding itself, preventing recurrences by this offender, and deterring others. The initial sentencers are told what they may consider, but not advised how the various facts should impact on arriving at a sentence. They are not told what the purpose of the sentence is; they are not told what should be their goal. They are given several means of punishment to select from but are generally left to their own devices to fit the pieces together in one intelligible sentence. What deters or rehabilitates one individual may fail with another. Experience in the art of sentencing would thus appear essential. And yet, when a court-martial is composed of members, they, rather than the military judge, will adjudge the sentence. This is in opposition to the accepted practice in most civilian jurisdictions, as well as the theory of the ABA's Standards on *Sentencing Alternatives and Procedures*, and should be changed, as suggested by Recommendation 2 of the ABA Standing Committee on Military Law.

Care must be taken when promoting change in this regard, however, due to other problems present in the area. Choosing a proper sentence is perhaps the most difficult decision made in the courtroom, and it should not be made by someone

who is untrained and inexperienced in penology. But do we achieve the correct result merely by vesting the military judge with power to sentence in all non-capital cases? I think not. Our military judges need training in the art of sentencing and they need legislation to aid them in obtaining the necessary information. I consider such training a continuing high priority item, even if there is no change in the present sentencing system. Great strides have been and are being taken by our military judges through their sentencing seminars, but much more needs to be accomplished. A sentencing handbook for trial judges in all the services is needed, as is a sentencing institute to offer guidance and training on sentences. This would be most helpful if the present system is to be changed by offering the judge assistance with his newly acquired powers. Many such publications and institutes already exist in civilian circles, such as that of the National College of the State Judiciary.

Another problem is that the sentencers hear some sentence argument, some mitigating or extenuating evidence, or even evidence of aggravation, and always some personal data concerning the accused. No one could characterize this material as a presentencing report in the modern sense of that term. We lack legal authority for such a report, and we presently lack the machinery necessary to put such a thing together. The model sentencing act, prepared by the Advisory Council of Judges of the National Council of Crimes and Delinquency, and reproduced in the ABA volume of *Standards Relating to Sentencing Alternatives and Procedures*, lists the following essentials: the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; the harm to the victim, his immediate family, and the community. You can see that our sentencers do not have available all of that information. But this is the very information which is essential to enlightened sentencing tailored to individual needs.

In this regard, the necessity of a full presentencing report would require certain revision in the *Manual*. In my opinion, all previous convictions by courts-martial *and* civilian courts should be admissible, without limitation as to time. *O'Callahan* v. *Parker* has reduced not only our jurisdiction, but also our ability to know and consider civilian offenses in determining the proper sentence. To utilize fully the information available by a presentence investigation, we might consider the propriety of deferring the sentence hearing to some future date. The hearing, when conducted, could include evidence as to restitution, compensation to the victim, etc.

There is also a basic jurisprudential objection to the vesting of power to review, modify, and reject sentences in a command and administrative figure like the convening authority. These are judicial functions. Even the Manual for Courts-Martial supports this description, when in paragraph 85c it states that before acting on the findings and sentence, a convening authority must "weigh evidence, judge the credibility of witnesses, determine controverted questions of fact . . . and determine what legal sentence should be approved." Phrases such as "*weigh* evidence," "*judge* credibility," and "*determine* controverted questions" certainly imply a judicial function. Also, the commander, just as the court members, is unlikely to be versed in theories of correction and rehabilitation, and he even lacks the face-to-face contact experienced by the members at trial.

The review of sentences by a convening authority does have an element which is clearly not judicial in nature. It is also, in part, an exercise of the traditional executive function of considering and granting clemency. This concept of clemency has always existed as something above and beyond the approval of the sentence in civilian jurisdictions, as witnesses in the power generally given a state governor. However, the process exists entirely apart from the judicial system itself. So it should be in the military.

A further problem exists in this area of sentence suspension, which takes us back to a subject I mentioned when discussing sentences. That is, there is a need for some system of partial, localized confinement. The Standards on *Sentencing Alternatives and Procedures* point to the benefit of confinement to a local facility which permits the offender to hold a regular job while subject to supervision or confinement on nights and weekends; and confinement followed by automatic release under supervision. Suspended sentences with probation, and sentences to partial confinement, dispensed by a judge who obtains feedback on his sentence or its suspension, would be an extremely important rehabilitative tool. The development of a military specialty for paraprofessionals to act as probation and parole

officers could enable us to realize this goal, and would also provide the means of compiling the aforementioned presentence reports.

Reviewing all of the foregoing, there are several steps we can initiate, and others we should consider. In the area of *sentences*, I suggest that we need, and should work to bring about:

a. a more definitive statement of the purposes behind the sentence;

b. more alternative sentence techniques, of the type I have mentioned, which reflect and account for the ancillary effects inherent in some of our present alternatives, and which can be tailored to fit the individual defendant;

c. less use of confinement, and the formulation of a rehabilitation system based on probationary techniques;

d. the use of correctional custody as a sentence available to our courts;

e. a thorough distinction between peacetime and other periods as a determination of the limitations of available sentences;

f. the consideration of civilian convictions in the Table of Maximum Punishments; and

g. a continuous analysis of sentences as to their deterrent effect.

In the area of sentencing, I suggest, as this Committee has done, that action be taken to vest in the military judge alone the power to sentence (with option of the accused to be sentenced by court-martial). Also, that a judge possess initial power to suspend, and vacate that suspension, eliminating the requirement for convening authority review except for clemency. The services should begin work on the details involved, so that change can be effected which is cognizant of the military necessities involved. Furthermore, I suggest:

a. the admissibility of records at the sentencing hearing be broadened and expanded as far as present law and procedures allow, in an effort to achieve a *limited* presentence report;

b. legislation to create a system of *detailed* presentencing reports, together with the paralegal services necessary to prepare the reports;

c. the establishment of sentencing institutes for the continuing education of military judges in their art;

d. the development of a detailed, all-service sentencing handbook for military judges;

e. encouraging the judge, as he sentences, to give reasons for the various components of his sentence, and to provide his rationale on the record for those who subsequently examine the sentences; and

f. create and specify in service regulations or the *Manual*, a judicial procedure, under a military judge, for vacation of suspension.

All of this with but one primary purpose, that being to provide the sentencing agency with the proper alternatives and the proper means to effect a sentence tailored to individual needs, as well as the needs of the military, and those of society in general.

In this whole area of sentences and sentencing, we have for too long had little serious questioning, fewer answers, and even less action. What we need more than anything else right now is thought and discussion, with a view toward change.

Chain of Custody in Marihuana Cases

By: Major Lawrence J. Sandell, Military Judge,
Third Judicial Curcuit, Fort Bliss, Texas

How do we know that the baggie of green, vegetable-like substance introduced at trial is the same one that was seized from the accused's wall locker? The prosecution and defense will often stipulate that the proferred evidence is that which was seized, and the government is relieved of any further obligation to authenticate the evidence. The same result obtains if the defense fails to object to the admissibility of the evidence. In the absence of a stipulation or waiver, many prosecutors feel compelled to establish a chain of custody by eliciting testimony from every person who came into contact with the marihuana. Listening to four or five witnesses testify that they received the evidence from the preceding witness, and that they did not tamper with it, is a numbing experience for both mind and body. It is also unnecessary. The show-

ing of an unbroken chain of custody of marihuana from the moment of seizure is not a prerequisite to admissibility.

Statements to the contrary in military publications notwithstanding,[1] it is not necessary to account for each link in the so-called "chain of custody." In *Pasadena Research Laboratories* v. *United States*,[2] government agents, pursuant to the Federal Food, Drug and Cosmetic Act, secured random samples of drugs mailed by the appellant laboratory to physicians' offices and sent them to a government laboratory for analysis. Appellant contended that the opinions of government witnesses, based on tests made after the drugs had been shipped to Washington, D.C., were worthless because there was no evidence that there was no tampering enroute to a doctor's office, or in the office, or in the hands of government inspectors, or enroute to the government laboratory.

The court noted that if appellant's theory were carried to its logical conclusion, the government would be required to prove affirmatively that each one of the many clerks, doctors, nurses, government agents and other persons had not tampered with the drugs while in their custody. The court refused to handcuff the government in that manner.

> Such a rigorous exaction regarding proof is supported neither by reason nor by authority. If the Government were obliged to establish the absence of "tampering" by everyone who had any contact whatsoever with the drugs, the Act would be incapable of enforcement.[3]

The court emphasized that it was not necessary that the article introduced at trial be identically the same as it was at the time of seizure. As long as the article can be identified, it is immaterial in how many or whose hands it has been.[4] "The only suggestions of mishandling are in the form of *dire possibilities* conjured up by resourceful counsel. But possibilities are not proof."[5]

The Army Court of military Review cited *Pasadena Research* in *United States* v. *Martinez*,[6] a case dealing with the analysis of a blood sample. The court stated that, in establishing that the evidence has remained substantially unchanged, the government need not exclude all possibilities of tampering. They need only satisfy the trial judge that "in reasonable probability the article has not been changed in any important respect."[7] In an earlier case, the United States Court of Military Appeals held that evidence of analysis of a urine specimen was admissible even though one of the persons who handled the specimen was not called to testify.[8]

The prevailing view today is that the government need not show a complete and exclusive chain of custody as a foundation for admissibility. The trial judge determines whether the showing as to identification and nature of the contents is sufficient to warrant reception of an article in evidence. In exercising his discretion, the judge should consider the nature of the article, the circumstances surrounding its preservation and custody and the likelihood of intermeddlers tampering with it.[9] In an earlier marihuana case, the court reiterated the standard proposition that before a physical object can be admitted in evidence, there must be a showing that such object is in substantially the same condition as when the offense was committed.[10] In order to meet this burden, however, the government is only required to satisfy to the trial judge that "in reasonable probability" the article has not been changed in important respects.[11] This is a far cry from requiring the government to negative the possibility of tampering by each link in the chain of custody.

The government's load is further lightened by the presumption of regularity which supports the official acts of public officers. In the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.[12] The presumption of regularity was applied in *Pasadena Research*.[13] There the court applied the presumption not only to the methods used by government chemists in handling the vials of drugs, but also to the care and to the absence of tampering on the part of the postal employees through whose hands the shipments passed.[14]

Although the presumption of regularity was not specifically discussed in *Bass*,[15] it appeared to be the basis of the court's decision that the results of laboratory analyses of urine specimens were admissible in evidence even though the person who delivered the specimens to the laboratory did not testify. The opinion stressed the absence of suspicious circumstances indicating that the specimens had been tampered with prior to analysis.[16]

The presumption of regularity has been applied in a variety of cases to sustain the admissibility in evidence of marihuana. In *Gal-*

lego,[17] the only other government agent with the combination to the safe where seized marihuana was stored did not testify. The court held that the trial judge was entitled to assume that the official would not tamper with the evidence and that he had properly discharged his official duties.[18] In *West* v. *United States,*[19] narcotics agents sealed and marked several packets of marihuana, and identified the packets at trial as those that had been forwarded for analysis. The court brushed aside the appellant's claim that there was not a proper chain of custody. A sealed package of marihuana is not likely to be spoiled by some unsuspecting person and there was no evidence that anyone had the inclination to tamper with the packets. The court held that, when viewed in light of the presumption of regularity which attaches to the handling of evidence within the control of public officials, the evidence was properly admitted.[20]

Calling each witness who came into contact with seized marihuana, in order to negative any possibility of tampering, is an unnecessary waste of money, manpower and trial time. The military trial counsel is not encumbered by a rigid requirement to prove a complete chain of custody before marihuana is admissible in evidence. In the absence of some evidence of tampering or foul play, the prosecutor need only convince the trial judge that, in all probability, the marihauna offered in evidence is substantially the same as that seized at the time of the offense. This is normally accomplished by the testimony of the witness who seized and sealed the marihuana. That foundation, buttressed by the presumption of regularity which cloaks public officials who may come in contact with the marihuana together with evidence that the substance offered is the substance that was analyzed, is sufficient to have the marihuana admitted in evidence.

Footnotes

1. "If the item is a substance such as body fluids or drugs, it is usually identified by establishing a chain of custody; each witness in the chain testifies as to his custody and handling of the substance... [Proof that the item was sent for analysis in a sealed container] obviates the necessity of establishing a chain of custody after the item was sealed." U.S. Dept. of Army, Pamphlet 27-22, Evidence, 1-1 (November 1973). "...the general rule appears to be that any person who has had possession of the article is a link in the chain of proof...[A]ny person who had possession of the article for a relatively long period of time or who had a substantial opportunity for tampering or substitution constituted a link in the chain." Imwinkelreid, *The Identification of Original, Real Evidence,* 61 MIL. L. REV. 145, 158 (Summer 1973).
2. 169 F.2d 375 (9th Cir. 1948), *cert. den.* 335 US 853.
3. *Id.* at 381.
4. *Id.*
5. *Id.* at 382.
6. 43 CMR 434 (ACM 1970).
7. *Id.* at 437.
8. United States v, Bass, 8 U.S.C.M.A. 299, 24 CMR 109 (1957).
9. United States v. DeLarosa, 450 F.2d 1057, 1068 (3d Cir. 1971).
10. Gallego v. United States, 276 F.2d 914, 917 (9th Cir. 1960).
11. *Id. Accord:* West v. United States, 359 F.2d 50 (8th Cir. 1966).
12. United States v. Chemical Foundation, 272 US 1 (1926).
13. 169 F.2d 375 (9th Cir. 1948) *cert. den.* 335 US 853.
14. *Id.* at 382.
15. United States v. Bass, 8 U.S.C.M.A. 299, 24 CMR 109 (1957).
16. *Id.* at 115.
17. 267 F.2d 914 (9th Cir. 1960).
18. *Id.* at 917.
19. 359 F.2d 50 (8th Cir. 1966).
20. *Id.* at 55.

Housing Complaint

The study that follows is the fifth of several case studies for the Handbook on Race Relations. The Judge Advocate General has tasked TJAGSA to draft this handbook and preview various portions in *The Army Lawyer.* Additional installments in this series will be following.

Fact Situation.

With the closing of Fort Delmar, Jackson Rigney, a black staff sergeant (E-6), has had to move his family to Fort Arthur for his new assignment. Upon arrival he checked with the post housing office to find an 11-month waiting list for adequate quarters on post, so he started looking immediately for something in the nearby civilian community. In his search of local advertisements he did find a seemingly nice two-bedroom duplex on the east side of town about two miles from post. Rigney made an appointment to view the duplex but upon arrival at the location, was abruptly told the house was no longer available.

Rigney returned to the post housing officer later in the day for further assistance in his hunt for a place to live. At that time he was told that a call had come in that morning asking that a duplex on the east side of town be listed in the housing office as it was vacant. Thinking this might be right for the Rigney's, the housing office clerk mentioned the address—the same address Rigney had been told was unavailable earlier in the day. At this point Rigney decided something was amiss and made his suspicions known to the housing officer. A telephone check with the realtor verified that the duplex was vacant and had been available for rent all day. Rigney has now come to the office of the staff judge advocate with his situation, complaining of discrimination and seeking immediate action by the command against the real estate agent involved.

SJA Actions.

What role does the staff judge advocate play in this situation? What assistance, if any, can he and the command in general give to correct the problem? What protections are available to military personnel who confront discrimination in the lease or purchase of off-post housing?

1. Statutory Protections. The 1968 Open Housing Act[1] proscribes discrimination based upon race, color, religion, or national origin, in the sale or rental of housing. Exemptions are allowed for boarding houses containing four or less family units, one of which is occupied by the owner as his residence,[2] and for single family homes sold or rented without the use of real estate services or publications.[3] The Act also provides for action by the federal government through the Department of Housing and Urban Development,[4] and the office of the Attorney General,[5] and for private civil action leading to the recovery of appropriate fees and costs, actual damages, and punitive damages not to exceed $1,000 to the successful plaintiff.[6]

The 1866 Civil Rights Act is also applicable to complaints of housing discirmination:

> All citizens of the United States have the same right, in every state and territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.[7]

While for several years after its passage the 1866 act was construed to protect citizens from state-supported discrimination, it is now clear that the Act grants protection from private discrimination as well.[8] As such, even in situations falling within the exceptions provisions of the 1968 Open Housing Act mentioned above, the 1866 Act may possibly be utilized to grant limited relief to a complainant. Such a relief will normally be injunctive in nature, but an action under this statute may also lead to the recovery of fees and monetary damages.[9]

2. Army Policy. The Department of the Army has applied the general provisions of the 1968 Open Housing Act to all its personnel through Army Regulations 600-18[10] and 600-21.[11] The latter regulation sets forth broad guidelines in the area of equality of housing:

> Off-post activities, including housing...in the United States or abroad, are either open to all soldiers and their dependents regardless of race, color, religion, national origin and sex, or they will be placed...on restrictive sanction.[12]

Note specifically that this policy is broader than that expressed in the 1968 Open Housing Act in that sex is included as a prohibited factor of discrimination, and further, that the coverage of the regulation extends to overseas as well as CONUS areas. Therefore, despite the fact that an alleged act of discrimination may not fall within the scope of the U.S. Code, if it falls within the broader parameter of AR 600-21, the commander still has an affirmative duty to seek an end to such discrimination and to utilize restrictive sanctions as appropriate.

Army Regulation 600-18 contains more specific guidelines in the area of discrimination in off-post housing. In an attempt to aid personnel in recognizing discriminatory practices when they occur, the regulation includes a list of typical practices in the housing field:

(1) Quotation of higher prices.

(2) Inflation of the tenor of racial prejudice in the area.

(3) Discouraging rental or purchase through inflating or dwelling upon poor features of the property in question.

(4) Falsely stating that the property is no longer available.[13]

The regulation also sets forth specific procedures of command operation when a complaint of discrimination is filed.[14]

3. Role of the Staff Judge Advocate. What is the role of the staff judge advocate in applying statutory and regulatory directives to a case of

purported racial discrimination as presented by Staff Sergeant Rigney? Initially a judge advocate officer may be the person to whom the complaint is communicated. He must have the ability and common sense to deal with it calmly and not jump to conclusions, make promises, etc., until all the facts from both sides are known. Coordination with the Equal Opportunity and Treatment Office on post, and with the post housing office is essential. Remember, despite the fact that the regulation requires certain actions to be taken, those actions will never commence if the appropriate personnel and offices are not contacted and advised of the situation. It is important to insure that the complainant is made aware of his rights within both the military and civilian sectors—that despite the obligation of the command to investigate, he may personally seek action by the Department of Housing and Urban Development and the Attorney General and/or seek private redress on his own as discussed above. It is imperative that all actions be taken within the time limit prescribed by the regulation, for undue delay may cost the command its credibility with much of its minority population as well as jeopardize the rights of the complainant on the civilian side.[15]

Throughout any investigation commenced under Army Regulation 600–18, the staff judge advocate plays a continual advisory role to both the investigating officer and the command to insure protection of the rights of the complainant and the real property owner against whom the complaint has been made. Such advice may be an essential part of any attempts by the command to gain voluntary assurances of no further discriminatory practices by the owner and will follow right through to a final legal review and comment on the report of investigation.

At its conclusion, if the investigation bears out the discrimination alleged in the complaint, the commander will impose restrictive sanctions against *all* properties of the owner for a minimum period of 180 days.[16] This power is vested directly in the local commander himself and as such differs from the off-limits authority outlined in Army Regulation 190–24. Further, there is no leeway in either the imposition or time limits of the restrictive sanctions. The commander has no choice but to impose the sanctions when discrimination is found, and they may not be removed prior to the end of the 180–day period.[17] In addition, when discrimination is verified, a copy of the report of investigation is to be forwarded to the Department of Housing and Urban Development, and to the Office of The Judge Advocate General for possible action by the Attorney General.

There is no question that full compliance with the provisions of Army Regulation 600–18 may cause hardships to real estate owners involved, and at times limit needed housing in various areas. However, when viewing the ultimate purpose and goals behind the 1968 Open Housing Act, and Army Regulations 600–18 and 600–21, even minute and seemingly inconsequential exceptions to these expressed policies and guidelines could lead to serious deterioration of the Army's Equal Opportunity Program as a whole.

Checklist.

1. Are newly assigned personnel informed of the requirements of the equal opportunity in off-post housing program prior to obtaining housing information?

2. Is there an effective equal opportunity in off-post housing information program?

3. Are community resources being used to support the equal opportunity in off-post housing information program?

4. Are housing discrimination complaints being expeditiously processed?

5. Are complainants being informed, in writing, of the results of investigations?

6. Are housing surveys being conducted periodically to obtain new listings?

7. Are restrictive sanctions being imposed immediately for a minimum of 180 days on agents found to be practicing discrimination?

8. Are the services of command representatives offered to accompany and assist applicants in their search for housing?

9. Are housing referral office and equal opportunity personnel sensitive to the problems of minority personnel?

10. Are timely and accurate equal opportunity in off-post housing reports being submitted?

11. Are DOD personnel being informed of restrictive sanctions?

12. Chronology:

A. Complaint filed:
B. Report of inquiry initiated:
C. Report of inquiry completed:

D. Voluntary compliance efforts initiated:
E. Voluntary compliance efforts completed:
F. Statement of legal officer completed:
G. Commander's memorandum completed:
H. Forwarded:

(Signature Block)

Footnotes

1. Act of April 11, 1968 (PL 90-284, Title VIII, 82 Stat. 81, 42 USC 3601, *et seq.*).
2. 42 USC 3603(b)(2).
3. 42 USC 3603(b)(1).
4. 42 USC 3608-3611.
5. 42 USC 3613.
6. 42 USC 3612.
7. Act of April 9, 1866, 14 Stat. 27 (42 USC 1982).
8. Jones v. Mayer, 392 US 409 (1968); Sullivan v. Little Hunting Park, 396 US 229 (1969).
9. 28 USC 1343(4); *See* ANTIEAU, FEDERAL CIVIL RIGHTS ACTS, 1971, at 41.
10. Army Reg. 600-18, "Equal Opportunity in Off-Post Housing," 19 November 1973. *See also* DoD Inst. 1100.16, 28 February 1973.
11. Army Reg. 600-21, "Race Relations and Equal Opportunity," 26 July 1973.
12. *Id.* at para. 4b.
13. Army Reg. 600-18, *supra*, at para. 2-1c(1)-(4).
14. *Id.* at Chapter 2.
15. Note 42 USC 3610 which requires filing with HUD within 180 days of alleged discriminatory act.
16. Army Reg. 600-18, *supra*, at para. 2-2c.
17. See DAJA-AL 1974/4232.

Judiciary Notes

From: U.S. Army Judiciary

1. Administrative Notes.

a. *Certificates of Attempted Service.* They should always have the Return Receipt from the Postal Service, signed or unsigned, attached thereto; and, when unsigned, the returned envelope with its contents and the postal marking of undeliverable by the Postal Service should also be attached. It would be most helpful if the certified or registered mail number could be included in the certificate of attempted service. *See* Chapter 15, AR 27-10.

b. *Report on Military Personnel Convicted of Civilian Felonies.*

Staff Judge Advocates of commands concerned are reminded that the report (RCS DD-M(SA) 1061), for the period 1 July-31 December 1974, on the number of military personnel convicted of felonies in U.S. Federal or State Courts is due by 5 February 1975. The continuing requirement for this report will be included in a future change to AR 27-10.

The reporting requirement is primarily applicable to USA Readiness Command; Forces Command; Training and Doctrine Command; USA Material Command; Health Service Command; Communications Command; USA Security Agency; Army Intelligence Command; US Army Recruiting Command; USA Support Command, Hawaii; Army Criminal Investigations Command; Military Traffic Management Command, Military Academy, Military District of Washington and Chief of Engineers.

U.S. Army, Europe & Seventh Army, as well as Eighth U.S. Army, Korea is required to submit reports only when members of their commands are convicted of felonies in U.S. Federal or State Courts while on leave or TDY within the United States.

The reports on Form RCS DD-M(SA) 1061 should be air-mailed to HQDA (JAAJ-CC), Nassif Building, Falls Church, Virginia 22041.

c. *Civilian Witnesses from CONUS.*

The Special Actions Branch, HQDA (JAAJ-CC), Falls Church, Virginia 22041 (Autovon 289-1193/4) processes requests for witnesses in court-martial proceedings when the overseas commands request civilian witnesses or military witnesses who are on leave in CONUS between permanent duty stations. It should be noted that a large number of witnesses have returned from overseas without proper compensation. According to DA Pamphlet 27-10, the duties of the trial counsel includes securing compensation for per diem, mileage and witness fees plus reimbursement for travel expenses to and from the trial. In addition, it is more appropriate for the requesting office to handle reimbursement, from the appropriate finance and accounting office in the command, for their witnesses since only that office has the necessary data to evaluate the claims being made by the individual witness.

In the January 1974 issue of *The Army Lawyer*, a similar note outlined policy regarding the procurement of witnesses. It was suggested

that approximately 25 days before departure be allowed when requesting a civilian witness and approximately 15 days when requesting a military witness on leave because of the considerable time necessary to arrange for the witnesses' travel. Full cooperation with the above-mentioned procedures is required in order for the Special Actions Branch to successfully accomplish its mission. Most of the witnesses requested need time to secure a passport and the required medical immunizations.

2. Recurring Errors and Irregularities.

a. In a number of general court-martial cases forwarded to The Judge Advocate General for examination under Article 69, UCMJ, it has been noted that the convening authority failed to order the approved sentence into execution. Such failure necessitates the withdrawal of the original action, a new action, and the publication of a new promulgating order. Staff Judge Advocates are urged to closely examine records of trial in general court-martial cases in which the approved sentence does not extend to a punitive discharge or to confinement of one year or more, and to ensure that such sentences are ordered into execution, unless the convening authority intends to suspend the entire sentence.

b. Several cases have been received where the convening authority in his action erroneously applied forfeitures even though confinement was disapproved or suspended. Staff Judge Advocates should carefully read the provisions of Articles 57(a) and 71(c) of the Code as well as paragraph 88(d)(3) of the *Manual* to ensure that forfeitures are applied at the appropriate time.

c. *October Corrections by ACOMR of Initial Promulgating Orders:*

(1) Failing to show the accused's name and SSN correctly—five cases.

(2) Failing to reflect the charges and specifications correctly—eleven cases.

(3) Failing to reflect the pleas correctly—four cases.

(4) Failing to show the findings correctly—three cases.

(5) Failing to show that the sentence was adjudged by a military judge—four cases.

(6) Failing to show correct number of previous convictions—two cases.

3. Note from Defense Appellate Division

Waiver of Rights in a Pretrial Agreement

By: Captain David A. Shaw, Defense Appellate Division, USALSA

The "Offer of a Pretrial Agreement" discussed at the 1973 JAG Conference on 17 September 1973 and proposed in *The Army Lawyer*, October 1973 at page 23 (DA Pam 27-50-10) has given rise to recent litigation at the appellate level. The provisions in the model agreement initiating the controversy are:

> "This plea will be entered by me or my counsel prior to presentation of any evidence on the merits and/or presentation of motions going to matters other than jurisdiction.
>
> * * * * * * * * * * *
>
> I further understand that this agreement will be automatically cancelled upon the happening of any of the following events:
>
> * * * * * * * * * * *
>
> 3. My failure to enter a plea of Guilty prior to presentation of evidence on the merits and/or presentation of non-jurisdictional motions."

Neither the *Uniform Code of Military Justice* nor the *Manual for Courts-Martial, 1969, (Rev.)* provides for the use of pretrial agreements in cases involving pleas of guilty. However, the Army court-martial system has long recognized the viable function served by pretrial agreements. The accused has the opportunity to obtain a more lenient sentence, and the Government is saved the time and expense of a prolonged trial. The Army has established policies and procedures which seek both to protect the rights of the accused and to foster the government's interest. (*See* DA PAM 27-5, *Staff Judge Advocate Handbook*, July 1963; DA PAM 27-173, *Military Justice Trial Procedure*, October 1973; and DA PAM 27-18, *Desk Book for Special Court-Martial Convening Authorities*, January 1974.)

The Air Force court-martial system, unlike the Army, disallows the use of pretrial agreements in guilty plea cases.

The Court of Military Appeals gave its qualified approval to the use of pretrial agreements in *United States v. Allen,* 8 USCMA 504, 25 CMR 8 (1957). However, both the Court of Military Appeals and the Army Court of Military Review have condemned written and unwritten agreements which have forced the accused to forego substantial rights. The Court of Military Appeals struck down agreements waiving the right to appeal *(United States v. Ponds,* 1 USCMA 385, 3 CMR 119 (1952), waiving appellate defense counsel *(United States v. Darring,* 9 USCMA 651, 26 CMR 431 (1958)), waiving a speedy trial issue *(United States v. Cummings,* 17 USCMA 376, 38 CMR 174 (1968)), waiving a due process issue *(United States v. Pratt,* 17 USCMA 464, 38 CMR 262 (1968)), and waiving the issue of former jeopardy *(United States v. Troglin,* 21 USCMA 183, 44 CMR 237 (1972)). The Army Court of Military Review has likewise disapproved agreements waiving the litigation of a jurisdictional issue *(United States v. Banner,* 22 CMR 510 (ABR 1956), waiving the presentation of all defense presentencing evidence *(United States v. Callahan,* 22 CMR 447 (ABR 1956), waiving all motions except speedy trial *(United States v. Peterson,* 44 CMR 528 (ACMR 1971)), and waiving "pretrial motions" and a request for trial by judge alone *(United States v. Schaffer,* 46 CMR 1089 (ACMR 1973)).

A recent trilogy of cases decided by the Army Court of Military Review in which the pretrial agreement contained the provisions of the model "Offer of a Pretaial Agreement" quoted earlier, has produced conflicting results. The issue raised was whether the convening authority can control courtroom proceedings by the accused's agreement to waive all nonjurisdictional motions such as the right to litigate the search and seizure of prosecution evidence prior to the entry of a guilty plea. The Court stated, in *United States v. Elkinton,* ___CMR___, (CM 430806, ACMR 12 September 1974), "the requirement in the instant pretrial agreement that appellant forego all motions except jurisdictional ones, is contrary to public policy and therefore void. Although it is discretionary with the military judge whether he will entertain certain motions prior to entry of plea, it is his discretion which is controlling and not that of the convening authority." The Court reaffirmed its position in *United States v. Groves,* CM 431196, (*MSF*, ACMR 16 September 1974); *United States v. Tackett,* No. 431442, (ACMR 15 October 1974) (MSF).

The Court went on to state in *Elkinton,* "the fact that a pretrial agreement is void as against public policy does not require dismissal of the charges." In both *Elkinton* and *Groves* the Court reviewed the entire record and concluded "in this instance the improper pretrial waiver was of no force and effect in the agreement and did not inhibit the appellant's presentation of his defense at trial."

Another Panel of the Court reached a contrary result in *United States v. Kapp,* ___CMR___, (CM 431143, ACMR 18 September 1974). The Court held "...an offer to plead guilty, the document which ordinarily initiates military plea bargaining, necessarily presupposes that the plea will in fact be guilty in order for the agreement to be operative. We perceive no objection to a condition which merely gives effect to the rule...that a guilty plea is a waiver of the right to contest admissibility of evidence. The actual waiver does not occur until the plea is entered, of course, but no right is abridged in exacting that an accused will admit guilt and save the time and expense of litigating *the merits* if a plea bargain is to have effect." The Court thus upheld the validity of the pretrial agrement.

Until this issue is finally settled, Trial Defense Counsel should resist the inclusion of these provisions in pretrial agreements.

TJAGSA Introduces New Developments Course

This fall The Judge Advocate General's School introduced its new Judge Advocate New Developments Course. The 1974-75 course, administered by the TJAGSA Academic Department's Office of Nonresident Instruction, was primarily designed to provide the military lawyer with timely information and training on new trends and developments in all areas of military law.

Patterned after some of the more progressive state-sponsored continuing legal education series, the new offering contains several in-

teresting and flexible features for the student-lawyer. Among them: its potential applicability to state bar recertification plans; a variable format between textual materials and selected audio tape cassettes; a "revolving" variable enrollment arrangement; and a credit/noncredit policy allowing selective participation for purely informational purposes, or for extended study and Reserve retirement points.

Content.

The new course will consist of lessons issued periodically throughout the fiscal year, totaling 72 credit hours and divided approximately as follows:

Phase I, Criminal Law	24 credit hours
Phase II, Administrative and Civil Law	20 credit hours
Phase III, International Law	16 credit hours
Phase IV, Procurement Law	12 credit hours

Each individual lesson will consist of one to four credit hours. It will contain textual materials, a practical exercise and the solutions to the exercise. Additionally, as an alternative to the regular mode of presentation some lessons will be offered in standard audio cassette form with a tape syllabus outline to accompany the cassette (students must provide their own access to tape playing equipment). Also, some lessons may have practical work which must be returned in order to receive credit for the course.

Credit/Noncredit Option.

One of the interesting facets of the instruction is its credit/noncredit feature. The New Developments Course may be taken for purely informational value in a noncredit mode. The noncredit student may take as few or as many phases as he desires. He does not have to participate in any practical exercises or take any examinations. It is anticipated that active duty military and government civilian lawyers may elect to be in this category.

The credit producing version of the New Developments Course is primarily designed for the Reservist. That student will be required to complete all of the assignments and pass the quarterly examinations to obtain credit toward retirement points. Those taking the course for credit must take all four phases *and* pass each quarterly examination within any given year.

Applicable to State Bar Recertification Plans.

One of the more recent events in the area of professional responsibility has been the movement on the part of various state bars to institute various recertification plans for their licensed attorneys. As part of some already-implemented state requirements, varying hour amounts of attendance at and participation in continuing legal education (CLE) programs may be required. TJAGSA nonresident courses may in some cases be substituted for state bar CLE programs depending upon what is decided by each individual state under the circumstances of its own particular requirements. If a non-Reservist desires to take the New Developments Course for credit with the hope of future application to state bar requirements, he may do so under the same requirements as those for credit producing participation. In such an instance, a certificate of completion or other appropriate document will be issued upon request.

Quarterly Examination.

The New Developments Course will be issued in three-month increments with lessons being distributed in each phase, each quarter. At the end of a quarter a standard correspondence course examination will be administered to cover only those lessons which have been issued during that particular quarter. Successful completion of each of these examinations will be required to obtain credit for that portion of the New Developments Course.

Variable Enrollment.

The course will be administered much like a commercial magazine subscription. A person may enroll at any time during the fiscal year and his lessons will begin as of the date of enrollment. No back lessons will be sent. His enrollment will be automatically terminated at the end of the fourth quarterly period after his original enrollment. A person taking the New Developments Course for credit who enrolls in the middle of a quarter will receive the lessons for the remainder of that quarter, however, the quarterly examination will only be administered for the next full quarter after the date in which he enrolls. For example, an individual desiring to enroll in November of 1974 will receive all of the lessons which are issued during the months of November and December, but the first quarter

for which he will be tested will be that quarter beginning in January 1975. This allows flexibility and accommodates the individual retirement year for the Reservist and permits credit to be earned on a quarterly basis.

Tape Cassettes.

The selected lessons in the New Developments Course presented on audio cassettes will be accompanied by an individual syllabus. That syllabus may be retained by the student for his own personal library. The particular cassette is the property of the United States Government and must be returned to The Judge Advocate General's School. However, any individual desiring to be initially furnished the information on his own cassette for permanent personal use may notify the School and send a blank cassette with a written request as to which program or programs he desires duplicated. These personal cassettes can be duplicated at no expense by the Audio Visual Division, TJAGSA. Dubs of New Developments cassettes may also be made "in the field" by subscribers, but originals must be returned.

Enrollment.

Enrollment forms for the new course may be obtained from the Office of Nonresident Instruction, The Judge Advocate General's School, Charlottesville, Virginia 22901.

Legal Assistance Items

From: Administrative and Civil Law Division, TJAGSA

1. Items of Interest.

Commendation to the Military Law Section of the State Bar of Texas which recently sponsored a Professional Development Program for Armed Forces Active Duty and Reserve Judge Advocates at Fort Sam Houston, Texas. The Program focused upon a number of subjects of interest to military lawyers such as state consumer protection laws, bankruptcy and wage earner plans, wills and probate, family law, real estate transactions, domicile and residence, preparation of Federal Tort Claims Act and hospital recovery cases, and the state lawyer referral plan. Programs such as this are excellent opportunities for the active duty JAG officer to participate in a continuing legal education program and to meet and associate with members of local bar organizations.

Pending Legislation—Survivor Benefit Plan. Legislation has been introduced which would liberalize the payment of annuities to military retirees and their survivors pursuant to the Survivor Benefit Plan. The legislation (H.R.15990) would ease the requirements for the surviving spouse to receive the annuity. The bill would allow any surviving spouse of a military retiree to receive the annuity if said spouse had been married to the retiree for at least *one year*, rather than two, prior to his death. A second bill (H.R.15989) would prohibit reduction in retired pay in cases where the beneficiary under a SBP election predeceased the retiree.

Recent State Legislation—Virginia—Landlord-Tenant. Virginia recently enacted the Virginia Residential Landlord and Tenant Act. The comprehensive statute defines the rights, obligations, and remedies of the landlord and the tenant. Of particular significance is the elimination of the doctrine of independent covenants thus making uninhabitability a defense to actions for rent.

Recent State Legislation—Montana—State Bonus. Veterans who were residents of Montana while serving honorably in Vietnam or a support area between 1 January, 1961 and 31 March, 1973 are now eligible for a state bonus from that state. Eligible Vietnam veterans may receive $18.75 for each month served in Vietnam or a support area. Information and forms may be obtained by writing State Board of Examiners, Capitol Building, Helena, Montana 59601. The application deadline is July 1, 1976.

Recent State Legislation—West Virginia–State Veterans who were residents of West Virginia six months prior to entering the service and who served on active duty for more than 90 days are now eligible for a state bonus. An eligible veteran who served in Vietnam may receive $20 per month up to a maximum of $400. All other veterans may receive $10 per month, up to a maximum of $300. There is also a provision for benefits to be paid to survivors of veterans. Information and forms may be obtained by writing to the State of West Virginia, Charleston, West Virginia 25305.

2. Cases of Interest.

Becknell v *D'Angelo,* 506 SW2d 688 (Ct.Civ.App.,Tex. 1974) Vacation of amended divorce decree pursuant to service member's absence from CONUS and invocation of the Soldiers' and Sailors' Civil Relief Act.

Fithian v. *Fithian,* 10 Cal3d592 (1974), *cert.den'd* (Oct.15,1974) Military retired pay constitutes community property and is therefore subject to division between the spouses upon dissolution of their marriage.

Jagnandan v. *Giles,* ___F.Supp.___ (D.Miss. 1974) Following the Supreme Court's direction that state classifications based upon alienage are "inherently suspect and are justifiable only upon the showing of a "compelling state interest," the three-judge court here found the state classification of all aliens as nonresidents for purposes of imposing higher state university tuition fees was unconstitutional.

Pollard v. *Saxe & Yolles Development Co.,* ____Cal3d____, 43 LW 2094 (Sept.10,1974) The state supreme court had previously held that there was an implied warranty of merchantability as between the builders and the owners because the "contract" in question was essentially one for the purchase of materials and labor. The court in this instance found that it would be anomalous to imply a warranty of quality as between those two parties, but refuse to protect a subsequent purchaser from defective construction and workmanship. Thus the court held that structural defects in newly-constructed real property render the seller liable to the buyer for a breach of the implied warranties. The question of a possible indemnity suit was not in issue.

Taylor v. *United States,* 379 F.Supp.642 (W.D.Ark.1974) A "bizarre" case of a litigious military widow and the judicial reviewability of actions and decisions of the Veteran's Administration with regard to survivor benefits.

United States v. *Hawaii;* ___F. Supp. ___(D. Haw. 1974) Section 514 of the Soldiers' and Sailors' Civil Relief Act bars the imposition by state authorities of a motor vehicle weight tax with regard to the automobiles of non-domiciliary service-members stationed in Hawaii pursuant to military orders.

3. Articles and Publications of Interest.

Disability Benefits. Wellan, LT Robt. H., "Armed Forces Disability Benefits—A Lawyer's View," 27 JAG J. 485 (Spring 1974). An excellent article both in its succinct analysis and description of the benefits available and in its assessment and criticism.

Disability Separation. DOD Information Guidance Series (DIGS) No. 8A-62, "Disability Separation," Oct., 1974.

Family Estate Planning. A series of 12 articles written by Homer I. Harris on the subject of family estate planning is presently being published in *The Retired Officer* magazine. The first article in the series appeared in the July 1974 issue.

Homeowners Assistance Program. The Army Times Service Center has recently prepared a pamphlet outlining the Homeowners Assistance Program. The program is designed to provide financial help to federal civilian and military personnel when they areforced to sell their home because a military installation is being closed or its mission is being significantly reduced in scope. The report outlines the eligibility requirements, the two principal parts of the program available to minimize the losses on the sale of the home; and the procedure for applying for benefits. Copies of the report may be obtained by sending 25 cents and a stamped, self-addressed envelope to the Army Times Service Center Dep't. HAP, 475 School Street, SW, Washington, D.C. 20024. Request Report No. 137.

Legal Services. Note, "Legal Services—Past and Present," 59 CORNELL L. REV. 960 (June 1974). See also, 24 L. REV. DIG. 22 (Mar-Apr 1974).

Military Lawyers. ABA Committee Publication entitled *Lawyers in Uniform.* The publication includes two articles: Lynch, "A Profile of the Lawyer in Uniform," and Douglass, "The Military Lawyer: A Capsule History." The publication may be obtained from the ABA Circulation Dep't 99, 1155 E. 60th Street, Chicago, Illinois 60637 (No charge).

Real Estate. ABA pamphlet entitled "The Proper Role of the Lawyer in Residential Real Estate Transactions," ABA Circulation Dep't 99, 1155 E. 60th Street, Chicago, Illinois 60637. (First 10 copies free; thereafter, 50 cents per copy).

Survivor Benefit Plan. DOD Information Guidance Series (DIGS) No. 8A-27, "Survivor Benefit Plan," Oct. 1974.

Enlisted Education Program For Court Reporters

The following message was sent to JA's in November.

A Fully Funded Stenotype Court Reporter Training Program for enlisted personnel, PMOS or SMOS 71D (Legal Clerk) or 71E (Court Reporter) is announced. The Program will be conducted at civilian institutions under the provisions of Chapter 5, AR 621-1 (6 May 1974) and will consist of an intensive, uninterrupted one-year course of study at a Stenotype Court Reporting School approved by the National Shorthand Reporters Association. Study will be concentrated on the Development of Proficiency on the Stenotype/Stenograph machine from basic theory to court reporting skills within this one year period.

Applicants must meet the eligibility criteria set forth in Paragraph 5-2, AR 621-1. These requirements are non-waivable.

Applications will be submitted in accordance with Paragraph 5-3, AR 621-1. Item 14, DA Form 2086-R, 1 Feb 74, "Course Area of Specialization," will indicate "Stenotype Court Reporting" as the desired course. Applicants will indicate a first and second choice in order of preference of the civilian stenotype court reporting school with the respective location that they wish to attend. Item 15, DA Form 2086-R, "Remarks" will indicate applicant's typing speed in words per minute. Also included in this item will be a brief narrative description of applicant's present duties as well as a brief history of his previous assignments in a Judge Advocate or legal office.

In lieu of the "Academic Evaluation Signed by the Installation Educational Advisor" required by Paragraph 5-3B(2), AR 621-1, as an inclosure to the application, there will be submitted a "Judge Advocate Evaluation" signed by an installation Staff Judge Advocate or the Senior JAGC Officer of a Legal Office. This evaluation will be completed following an interview with the applicant. The evaluation should describe accurately the applicant's performance of duty to date as a Legal Clerk (71D) or Court Reporter (71E) and assess his potential value to the Army as a Stenotype Court Reporter. Individuals selected for possible attendance at the course must be highly motivated to become a Stenotype Court Reporter. It should be thoroughly understood that the attainment of the requisite stenotype court reporting skill (175-200 words per minute), with attendant transcription-typing proficiency, will require maximum expenditure of the student's time and effort during the one-year training period.

Enlisted personnel selected for attendance in the Stenotype Court Reporting Training Program must contract prior to departure from home station, sufficient service remaining requirement to meet the following criteria:

Training Rec'd	*Svc Oblg Following Schooling*
1 calendar yr of training or less	36 mos
More than 1 calendar yr but not more than 2 calendar yrs of training	48 mos

Enrollment will be made in the National Shorthand Reporters Association approved Stenotype Court Reporting Schools who have agreed to participate in this Program.

Applications (DA Form 2086-R) will be sent to HQDA (DAPC-EPE-E), 2461 Eisenhower Avel, Alexandria, Virginia 22331.

Schools participating in this Program are:

California
Merit College of Court Reporting (Formerly Gumpert Stenotype), 12431 Oxnard St. North Hollywood, CA 91606.

Connecticut
Connecticut Business Institute, 1188 Main St., Bridgeport, CT 06603. Connecticut Stenographic Institute, Courthouse Bldg, 177 Columbus Boulevard, New Britain, CT 06051.

District of Columbia
Temple School, 710-14th Street, N.W., Washington, D.C. 20005.

Florida
Business University of Tampa, 203½ Franklin St, Tampa, FL 33602. Stenotype Institute of Jacksonville, 500 9th Ave, No., Jacksonville Beach, FL 32250.

Hawaii
Cannon's College of Commere, 33 So. King St., Honolulu, HI 9681e.

Illinois
Chicago College of Commerce; 27 East Monroe St., Chicago, IL 60603.

Michigan
Elsa Cooper School of Stenotype, 1442 Griswold St., Detroit, MI 48226.

Lansing Community College, 419 North Capitol Ave., Lansing, MI 48914.

Minnesota
Minnesota School of Business, 24 South 7th St., Minneapolis, MN 55402.

Northern Technical School of Business, 1111 Nicollet Avenue, Minneapolis, MN 55403.

New York
Adelphi Business Schools, 47 Mineola Boulevard, Mineola, L.I., NY 11501 and 1712 Kings Highway, Brooklyn, NY 11229.

Interboro Institute, 229 Park Ave South, New York, NY 10003.

Merchants & Bankers Business and Secretarial School, Estey Schools, Inc., 41 East 42nd St., New York, NY 10017.

Roney Stenographic Studio, 50 Taft Ave., Lancaster, NY 14086.

Spencer Business School, 404 Union St., Schenectady, NY 12305.

Stenotype Institute of New York, Inc., 115 West 45th St., New York, NY 10036.

Rhode Island
Johnson & Wales Junior College of Business, Abbott Park Place, Providence, R.I., 02903.

South Dakota
Stenotype Institute of South Dakota, 2009 South Minnesota Ave., Sioux Falls, SD 57105.

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Southwest Business College, Veigel Building, Plainview, TX 79072.

Stenograph Institute of Texas, 104 Pine St., Abilene, TX 79601.

Washington
Auerswald's Business University, 1524 Fifth Ave., Seattle, WA 98101.

Wisconsin
Gateway Technical Institute, 3520-30th Avenue, Kenosha, WI 53140.

New Change in Staffing Guide Affects JA Offices

From: Developments, Doctrine & Literature Division, TJAGSA

(We are indebted to CW3 "John" Schreiber for alerting us to the fact the important change has gone unnoticed by some JA offices.)

Guidance for determining the number and function of personnel required for performing garrison functions at CONUS TRADOC and FORSCOM installations is provided in DA Pamphlet 570-551, Staffing Guide for US Army Garrisons. This pamphlet, while not an authorization for personnel, depicts the tentative manpower requirements necessary to perform various functions in ordinary operating situations. Variations from the listed manpower requirements are expected; and where functions differ from those described in the pamphlet or where unusual factors significantly affect functions or workload, modifications to the pamphlet's schedules must be made.

The manpower requirements for Staff Judge Advocate and Judge Advocate offices were significantly altered by the promulgation of Change 2 to the pamphlet on 21 December 1973. This change made substantial upward revisions in the number of judge advocates and support personnel required in the military justice division of SJA offices, while retaining other divisions at relatively constant strengths.

Comparing the present requirements for personnel in the military justice division per 1000 military population with those formerly programmed, the requirements have more than doubled:

Military Population	10,000	20,000	30,000	40,000	50,000
Military Justice Personnel					
Under Prior Standards	3	6	9	11	12
Under Current Standards	8	16	23	30	37

Similarly, at installations without GCM jurisdiction the number of personnel required for a Judge Advocate office has increased dramatically:

Military Population	1,000	2,000	3,000	4,000	5,000	6,000	7,000	8,000
JA Office Personnel								
Under Prior Standards	2	3	5	5	5	6	6	6

Under Current Standards	4	6	7	9	10	11	11	12

These upward revisions in personnel required encompass both judge advocates and support personnel. In the SJA offices, the ratio of judge advocates to support personnel is programmed at about 2:1. In non-GCM judge advocate offices the ratio is roughly 1.5:1. For further information, readers are invited to consult DA Pamphlet 570-551, C2, 21 Dec 1973, Staffing Guide for US Army Garrisons.

Captain's Advisory Council Notes

After Action Report—1974 Regional CLE Conference. On 24 and 25 June 1974 the Captains' Advisory Council sponsored a Regional Continuing Legal Education Conference at Fort Meade, Maryland. That "demonstration" conference culminated six months of planning and coordination.

The purpose in running a two-day conference was two-fold. First, the conference would provide a vehicle for presenting a continuing legal education program—not by replacing any existing programs but instead offering a short, yet effective, regional conference covering several major areas of concern (with emphasis on practical aspects). Secondly, the conference was designed to allow the junior officers of the Corps to meet in a relaxed atmosphere and meet their peers, representatives of the offices of The Judge Advocate General and Personnel Plans and Training, and other senior officers in the Corps.

The council feels that it was successful in meeting both goals. As will be discussed later, that fact is borne out to a certain extent by the post-conference comments of the participants. We are pleased with that response and are eager to share our experiences in sponsoring the conference.

Organization and Planning.

At the outset the council envisioned the conference as a cooperative effort between itself and a nearby installation capable of hosting such an activity. While that installation would be primarily responsible for the physical requirements (billeting, mess, etc.), the council would furnish an agenda and speakers.

Responsibility for the overall planning and organization of the conference fell primarily on the shoulders of three conference "coordinators":

1. General Coordinator: Captain David A. Schlueter (Chairman, Captains' Advisory Council). Responsible for overall coordination of conference, *i.e.* agenda, facilities, transportation, correspondence, etc.

2. Financial Coordinator: Captain Fred Smalkin (Past Chairman and Treasurer, Captains' Advisory Council). Responsible for allocation of available funds, obtaining fund cites, registration, etc.

3. Facilities Coordinator: Captain Anthony Gamboa (Deputy Staff Judge Advocate, Fort Meade, Maryland). Responsible for obtaining conference facilities, billeting, mess, banquet facilities, etc.

Other members of the council were charged with outlining an agenda, serving as seminar moderators, and performing a myriad of necessary and sometimes endless number of tasks.

Agenda.

From the outset the council strived for an agenda which would place emphasis on the everyday practical problems of the Army lawyer. Rather than presenting a lecture-oriented program, it was felt that extensive use of seminars and workshops would encourage a greater degree of interaction and generate an exchange of common problems and possible solutions among the participants.

After a council subcommittee had outlined a tentative agenda (Captains Willis, O'Brien, and Needle), council members representing various areas of specialty (*i.e.*, military justice, admin. law) were then charged with preparing (1) a general presentation for the conference as a whole and (2) a workshop catering to attendees who might be interested in that particular area.

Rather than presenting a "specialized" conference, it was thought that this first demonstration conference should attempt to meet the interests of a broad cross-section of JAG captains. A review of the agenda indicates that the conferees were exposed to many diversified areas of mili-

tary law. In providing such a large degree of diversification, the council recognized that a smaller amount of time could be devoted to any one area of military law. However, it was felt that all conferees should be provided some exposure to the different areas through general presentations and then also be provided the opportunity to meet in specialized seminars. In his opening remarks the Chairman recognized that there were areas which would not be of interest to some of the conferees; they were reminded that they were in effect representatives of their respective posts and that in order to enrich those posts they might consider taking part in workshops not necessarily of primary interest to themselves but of possible importance to their respective JAG shops.

General Presentations. Those council members representing the various divisions of the Office of The Judge Advocate General and of the United States Army Legal Services Agency were responsible for presenting a stimulating overview of their division's areas of responsibility and recent developments.

Although a few conferees remarked that areas such as international affairs and contract appeals seemed to have little relevance to the conference, others observed that those two presentations had been impressive because they showed the dependence on JAG legal advice in highly technical and semsitive matters. Particularly appealing were the presentations on litigation, military justice, and legal assistance.

The remaining presentations were also well received and a consensus of the conferees was that for the most part, the speakers seemed to be knowledgeable in their areas and well prepared.

Seminars. In addition to planning general presentations various council members were responsible for gathering materials and moderators for seminars in their respective areas of law. Obtaining those moderators and coordinating their presence proved to be problem in some instances because many found their time being taken up with normal workloads. The seminars were designed to provide interaction between the conferees on recent developments in military law and their eventual impact on the Corps in the practice of law in the military.

A few of the seminars were offered twice, thus enabling the conferees to take part in several different areas. A review of the critique sheets indicates that this offering was well utilized by the participants.

Some of the workshop moderators gathered and reproduced pertinent material such as problems, outlines or recent cases. One such offering appeared in the September issue of *The Army Lawyer.*

The council had discussed the use of printed materials and decided against massive handouts which would be discarded. Interesting to note, however, is the fact that several conferees suggested the dissemination of more handouts—something tangible that could be shared with fellow JAG's in the field (it might be noted here that conferees were provided with manila folders, writing paper, and pencils in addition to any handouts).

Critique. Remarks by the attendees concerning the agenda and the workshops were varied. Almost all of those polled were of the opinion that the agenda "was interesting and covered main problem areas adequately considering the time available." Likewise the majority of those attending felt that the workshops or seminars were "quite informative and well organized." The remarks concerning specific workshops were many and varied. Rather than listing each and every suggestion or comment, we have here instead generalized those comments (copies of the critiques are on file).

A few voiced the idea that a more detailed agenda, including outlines of subjects to be covered, could have been sent to the participants in advance of the conference thus enabling the participants to ready themselves with questions and/or suggestions (This suggestion is good but could cause problems if necessary last minute changes were needed). Along this same line at least one conferee suggested that a poll be taken among prospective participants to determine what subjects should be covered.

Although many of those polled after the conference stated that they appreciated the talent and dedication of the workshop moderators, some felt that the views of the representatives of the different divisions were idealistic in their approach—not practical enough. Apparently some of the seminars had touched on the "teacher-pupil" method rather than fostering any interaction between participants. On the other hand, several participants indicated that they had benefited greatly from listening and speaking to those moderators whose view was

taken from an appellate or administrative standpoint. This split of opinion was probably best stated by one of the conferees:

> Having appellate attorneys give workshops was good and bad—it indicates only one area, albeit important, of practice. I especially would like to see appellate practice alone discussed for my own enlightenment, while I am sure trial counsel would like to get into tactics used by *other* trial counsel. Do not, however, sacrifice continuing legal education as to appellate decisions for more specialized topics.

Several participants suggested a greater degree of participation by experienced field personnel, especially in the military justice area. Other comments regarding the agenda included the following:

1. Structure a conference of only seminars or workshops, no lectures or general presentations;
2. Instead of a "general" agenda, limit the conference to only specialized areas, *i.e.*, procurement, military justice, etc.;
3. Use more speakers from the field;
4. Include workshops on legal research;
5. Workshops could have been longer "some speakers had more information they could have given";
6. Conference was beneficial if you are in military justice and related areas;
7. More emphasis should have been placed on courtroom tactics and problems;
8. Include some material on "regulations," their use and what changes the field would like to see implemented especially in light of the court-made requirements;
9. The military justice panel (military judge and two appellate counsel) was good—consider sending it to other conferences.

Facilities. As noted earlier the council proposed the conference with the thought that the burden of securing the necessary facilities could be put in the hands of a nearby post or installation. Because of the wealth of speakers and talent in the Washington, D.C. area and because the council felt that it would be easier to coordinate and monitor a conference located close by, a site close to Washington was recommended.

In February 1974, letters were sent to five area installations soliciting offers to work with the council in presenting the conference. The JAG shop at Fort Meade, Maryland, responded eagerly and that post was selected as the site for the conference. Subsequently, Captain Anthony Bamboa from Fort Meade was named as the conference liaison and worked with the two coordinators from the council in securing the necessary facilities and services:

1. A conference "center" to consist of at least one large meeting room and three or four small "workshop" rooms;
2. Nearby billeting (on-post or off-post) for approximately 25 participants and/or leaders;
3. Banquet facilities for the Monday evening banquet,
4. Transportation for participants between billeting, mess, and conference center.

Conference Center. Rooms at the Chapel Center at Fort Meade were obtained for use by the council for the conference. The center was spacious and comfortable and met the needs of the council. We had access to a large conference room capable of seating upwards of 100 people and four smaller rooms which were used for the workshops and interviews with personnel from the Personnel Plans and Training Office.

Billeting. Becuase reserve units training at Fort Meade took billeting priority, it was necessary to obtain off-post rooms at a nearby motel. Certificates of nonavailability were given to those using those rooms. Reservations were made for those participants desiring them (approximately 20) for the Sunday and Monday nights of the conference. The motel's accessability and reasonable rates made it a more than adequate substitute for any on-post housing which might have been secured.

Transportation. The Fort Meade motor pool provided a bus for both days of the conference so that the participants could be transported between the motel, conference center and the officer's club where most of the participants ate lunch on the first day and then later attended the conference banquet. Transportation to Fort Meade for the Washington area JAGs was arranged through the MDW motor pool. However, a great majority of JAG's attending from the Washington, D.C. area used their own private vehicles in traveling to Fort Meade.

Banquet Facilities. A room in the officer's club at Fort Meade was obtained for the Monday evening banquet. Cocktails preceded the well-prepared meal (cost — $6.50) which was followed by a well-received presentation by Mr. George Beall, the United States Attorney for the District of Maryland. Approximately 60 persons (including wives and other guests) attended the banquet.

Miscellaneous. In order to acquaint the participants with the general layout of Fort Meade and the surrounding area, maps and information sheets were sent out in advance of the conference noting locations of the conference center, officers' club, and motel. As the conferees registered on the morning of the first day, a general information sheet and map, which had been prepared by Fort Meade personnel, was distributed to them.

Finance. Fortunately, funds ($2,500.00) were available for this "demonstration conference" from the Office of The Judge Advocate General. This allowed officers from the more distant posts on the East Coast to attend the conference; the availability of those funds in effect provided life blood for the regional concept of the conference. Eighteen officers representing 18 different posts were offered such funds and an additional six officers were funded by their respective posts. No provisions were made for funding JAG's in the immediate Washington area.

Officers being funded by the Office of The Judge Advocate General were requested to submit their names to the council which in turn provided "fund cites" which were to be included on the officers' orders.

Expenses for the conference (banquet tickets, coffee and doughnuts, writing materials, and utensils, etc.) were covered by an $8.00 registration fee collected at registration on 24 June. Those participants not wishing to attend the banquet were assessed only a $2.00 registration fee. Additional banquet tickets for relatives or friends of participants were available at the cost of $6.50 apiece.

In order to effectively handle the receiving of registration fees and payment of bills, the council, prior to the conference, opened a checking account in one of the area banks with a view towards possible future use in other council activities.

Publicity. Publicity for the conference was low-keyed. There was no fanfare nor were there any massive mailouts. The council was really faced with a dilemma when publicity for the conference was discussed. The council was anxious to involve as many people as possible and expose a great number of JAG's to the concept of the regional continuing legal education conference. Yet the council was also cognizant of the problems of management and the experimental element involved. It was therefore decided that this first regional conference should deal with only approximately 50 participants.

Letters of invitation (with an introductory letter from Major General Prugh) were sent to 18 posts on the East Coast asking each to send several officers and advising each post that one of its officers would be funded by the Office of The Judge Advocate General but that any additional officers would have to be funded by the local post. Notices of the conference were also sent to the various division chiefs in OTJAG and USALSA encouraging them to send one or two officers to the conference.

Participants. Of the approximately 50 captains participating in this first regional conference, roughly half of those were from outside the Washington metropolitan area. The following posts or installations were represented at the conference by one or more captains: Fort Knox, Fort Monmouth, Fort Lee, Fort Campbell, Fort Detrick, Fort Bragg, Fort Jackson, Fort Richie, Fort Monroe, Fort Dix, Carlisle Barracks, Fort Belvoir, Fort Eustis, Fort Hamilton, Military District of Washington, Fort Meade and Aberdeen Proving Grounds.

A number of the participants were only able, for one reason or another, to attend some portions of the conference. This was especially true for the conferees attending from Fort Meade who were able to take some time off from their normal duties and attend seminars, etc. of particular interest to them. The council therefore estimates that up to 60 captains attended the conference at some point.

Although no poll was taken as to each captain's area of specialty at his respective post, from the attendance of the various seminars, it would be safe to say that the greater majority of those attending worked in military justice or related areas. That ratio had been expected by the council when it planned its agenda; however, as we noted earlier in this report, the council felt that the agenda should present a broader concept and include discussions and presentations on areas other than military justice.

Open Discussion on "Practice of Law in the Military." The last item on the agenda consisted of an open discussion between the participants of the conference concerning various aspects of military law which had proved troublesome. During the 45 minutes or so which were devoted to this particular subject, several main areas of interest arose.

First, the captains were concerned over the existing policies concerning JAG's performing as staff duty officers at their respective posts. Representatives of the council explained to those in attendance that the policies were of course left up to the discretion of the individual post commander and that in cases of abuse of that discretion such should be brought to the attention of the council which would in turn forward such complaints to The Judge Advocate General. Not all of the captains, however, felt that such duties were demeaning or burdensome. The thought was expressed by one of the participants that it was a necessary duty and that although JAG's were lawyers, they were also officers in the military who should be ready to serve when called.

Along this same line, one or two captains noted that the attitude toward JAG's could be affected to a great extent by the professional attitude of the JAGs and that such a relationship varied greatly from post to post depending on the personalities involved. Several captains noted that the presentations by the International Affairs Division and the Contract Appeals Division had indicated that JAG's were being relied on to a greater extent in technical and sophisticated areas.

The second major area of concern during the discussion revolved around the problems of adequate libraries in the field. The council responded by noting that actions would be taken where possible to review existing library standards and coordinate any existing activities in that area to help insure that the JAGs in the field would be adequately supplied with up-to-date library materials. Once again the participants were urged to forward any complaints or suggestions to the council which would in turn forward such complaints or suggestions to the proper parties.

Although no problems were solved during the discussion, the council felt that it had adequately assured the participants that The Judge Advocate General did indeed have an open-door policy concerning the interests of the junior partners in the law firm, and that the council was ready, willing and able to help serve as a receptacle for any suggestions and/or complaints concerning the practice of law in the military.

Critique. In the earlier discussion of the agenda, we related some of the comments and suggestions relating only to that aspect of the conference. Perhaps a few words should be addressed to the participants' reactions to the conference as a whole. A vast majority polled (30 participants turned in their critique sheets) felt that the conference was "very beneficial" and "very well organized." Still others felt the conference to be "worthwhile" and "adequately organized." There were of course some negative comments but for the most part those comments were followed with helpful suggestions. The overall response certainly provides impetus for conducting similar conferences in the future.

Recommendations and Conclusions. Needless to say, the council was excited with the results of the conference. The response from the participants, speakers, and other guests was encouraging—at least one participant volunteered his services for any future conferences. The council is indeed anxious to share its experiences (and a little hindsight) and perhaps help other regional conference planners avoid some of the problems and pitfalls that we encountered. We would specifically recommend that:

1. Other regions within CONUS be encouraged to experiment with a continuing legal education conference similar to the one offered at Fort Meade. Perhaps several larger posts could consolidate their resources and sponsor the conference;

2. Any future conference should include, if possible, several areas of military law. The suggestion that the "specialized" conference be offered is good but would really be only a duplication of short courses offered at The Judge Advocate General's School,

3. These conferences should be short (not more than two days) but loaded with interesting speakers and workshop moderators who readily generate interaction among the participants;

4. Early planning should allow for a polling of participants as to the level of interest in certain areas of military law. This would help avoid needless expenditures of time and effort in planning an agenda;

5. Planners of any future conferences should seriously consider taping either presentations or workshops which might be of great interest to JAG officers and be used for instructional purposes; and

6. If possible funds should be made available from the Office of The Judge Advocate General in order to encourage participation on a "regional" scale and ease the fiscal burden of the individual posts and installations.

There are no immediate plans to sponsor another continuing legal education conference in this area. However, the council would strongly encourage other areas to consider the possibility of conducting a conference. Rather than serving directly as a coordinator or planner for any such conferences, the council sees its role as serving in an advisory or resource capacity; any installations or posts considering the possibility of conducting a conference should be feel free to contact the council for suggestions and/or aid in securing moderators, speakers, and/or distinguished guests.

It would appear that the goals and methods employed in any future conferences would vary from site-to-site because of a natural tendency to emphasize areas of greater interest to the locale.

A special word of thanks must go to Major General George S. Prugh whose wholehearted support for the conference from the very start really got the project off the ground. His role in encouraging participation and his presence during the entire first day (which as one participant noted was very encouraging) is gratefully acknowledged. His active support confirmed his belief in the important role of a continuing legal education program within the Corps.

It would indeed be an understatement to state that the conference was an educational experience not only for the participants but also for those who participated in planning and coordinating the conference. We conclude with the thought that we hope that the participants who attended the conference gained as much as those who presented it.

TJAGSA—Schedule of Resident Continuing Legal Education Courses Through 30 August 1975

Number	*Title*	*Dates*	*Length*
5F–F10	11th Law of Federal Employment	9 Dec–12 Dec 74	3½ days
5F–F12	5th Procurement Attorney, Advanced	6 Jan–17 Jan 75	2 wks
5F–F17	1st Military Administrative Law	13 Jan–16 Jan 75	3½ days
5F–F8	18th Senior Officer Legal Orientation	27 Jan–30 Jan 75	3½ days
7A–713A	5th Law Office Management	3 Feb–Feb 75	1 wk
5F–F15	2d Management for Military Lawyers	10 Feb–14 Feb 75	1 wk
CONF	National Guard Judge Advocate Conference	2 Mar–5 Mar 75	4 days
5F–F11	61st Procurement Attorneys	24 Mar–4 Apr 75	2 wks
5F–F11*	62d Procurement Attorneys	7 Apr–18 Apr 75	2 wks
5F–F13	2d Environmental Law	7 Apr–10 Apr 75	3½ days
5F–F8	20th Senior Officer Legal Orientation	14 Apr–17 Apr 75	3½ days
5F–F8**	19th Senior Officer Legal Orientation	28 Apr–1 May 75	4 days
(None)	3d NCO Advanced	28 Apr–9 May 75	2 wks
5F–F6	5th Staff Judge Advocate Orientation	5 May–9 May 75	1 wk
5–27–C8	22d JA New Developments Course (Reserve Component)	12 May–23 May 75	2 wks
5F–F30***	1st Military Justice I Course	16 Jun–27 Jun 75	2 wks
5F–F1***	1st Trial Attorneys Course	23 Jun–27 Jun 75	1 wk
5F–F8	21st Senior Officer Legal Orientation	30 Jun–3 Jul 75	3½ days
5F–F9	14th Military Judge	14 Jul–1Aug 75	3 wks
5F–F3	19th International Law	21 Jul–1 Aug 75	2 wks
5F–F11***	63d Procurement Attorneys	28 Jul–8 Aug 75	2 wks

*New course addition
**Army War College Only
***Revision in previously listed course

Current Materials of Interest

Articles.

Graham, "Repatriation of Prisoners of War During Hostilities—A Task Unsuited for the Private Citizenry," 8 INT'L LAW. 832 (October 1974). Captain David E. Graham, JAGC, refutes the contention that the Committee of Liaison—an anti-war group of private U.S. citizens—acted in accordance with international law in arranging for the return of American PW's from North Vietnam in 1972.

Comment, "Assuring the Right to An Adequately Prepared Defense." 65 J. CRIM L AND CRIMINOLOGY 302 (September 1974).

White, "The Judge Advocate General—1983" 46 JUDGE ADVOCATE J. 41 (October 1974). Major Charles A. White, Jr., JAGC, presents a farcical essay on the future of the Corps.

Redmount, "The Use of Psychologists in Legal Practice," 20 PRAC. LAW. 79 (October 1974).

Course.

Consumer Credit 1975.

January 9-10	Americana of Bal Harbour Hotel Miami
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February 6-7	Americana Hotel New York

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By Order of the Secretary of the Army:

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